INITIAL REPORT ON THE IMPLEMENTATION OF CHAPTER 537, ACTS OF 1986:

AN ACT ESTABLISHING A ONE-TRIAL SYSTEM FOR CRIMINAL CASES IN ESSEX AND HAMPDEN COUNTIES

ADMINISTRATIVE OFFICE OF THE DISTRICT COURT DEPARTMENT

January 1, 1988

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I. SUMMARY OF FINDINGS

Review of the implementation of the one-trial system in Essex and Hampden counties during the five-month period July through November, 1987, provides the bases for the following conclusions:

1. No major case flow problems appear to have occurred during this period as a result of the new one-trial system.

Introduction of the one-trial system appears to have had no major negative impact on District Court criminal case flow in either the primary courts or the jury sessions in Essex or Hampden Counties. A noticeable increase in jury trial requests has occurred in Hampden County, but the cause of this increase has been identified and its remedy appears attainable without the requirement of any change in the new procedural system. This transitional increase has not resulted in any significant case flow delay or backlog accumulation.

2. The benefits of the one-trial system have been obtained without the emergence of any major issues regarding the legality or practicality of the one-trial procedural system.

None of the many specific procedural elements built into the one-trial procedure (for example those involving discovery, admissions to sufficient facts, pleas of guilty, pretrial motions, claims for jury trial, and transfer of cases to the jury sessions) has been shown to be unworkable, either in terms of unfairness to defendants or impracticality in case scheduling and disposition.

3. The shift to a one-trial system has not resulted in any significant new costs as yet.

No new costs associated with staff, equipment, supplies or any other requirement have as yet resulted from the implementation of the one-trial system, at least with regard to the district courts involved, except that there continue to be clerical and session clerk staffing needs among the affected jury sessions. However, these needs preexisted the implementation of the one-trial system and would exist independent of the change.

4. A few specific issues have been identified regarding further improvement in the implementation of the one-trial system. These issues provide the opportunity to "fine tune" the one-trial procedure to further enhance its effectiveness.

The issues identified appear to call for enhanced education and information. There appears to be no need for any change either in the statute or rules setting out the one-trial procedure.

II. INTRODUCTION

On November 18, 1986, the Governor signed into law a bill with major implications for the improvement of the administration of justice in the District Court of Massachusetts. That bill, St. 1986, c. 537, terminated the so-called "de novo" or two-trial system for District Court criminal cases in Essex and Hampden Counties, and replaced it with a system providing each defendant with the opportunity for a single trial, with or without a jury, at the defendant's option. The bill had an effective date of July 1, 1987, and will continue in effect until June 30, 1989. During this two-year period, the fairness and effectiveness of the new procedures are to be monitored. Based on that review, at the end of the two-year period procedures will either revert to the old de novo system, or the new one-trial system will be continued in Essex and Hampden Counties and presumably will be considered for broader implementation.

The statute requires several reports to be made by the Chief Justice of the District Court to the Legislature.[1] This is the first of those reports.

In addition to providing required statistical analyses and cost statements, this report also provides a review of the initial implementation phase of the one-trial procedure in terms of the degree of difficulty encountered by those obligated to operate under its new requirements.

The initial phase of implementation of Ch. 537 has been remarkable only for the absence of significant difficulties in the transition. Given the magnitude of the underlying change in terms of procedure and the volume of cases affected, it seemed reasonable to anticipate at least some degree of difficulty in the initial months of implementation. However, it appears clear that the shift to a one-trial procedure for District Court criminal cases in Essex and Hampden Counties has been accomplished without major case flow disruption or procedural confusion and with no jeopardy to defendants' rights.

While the statistics analyzed in this report reveal no dramatic impact on District Court case flow during the initial months of implementation, a conclusive determination of the overall affect on case flow will not be possible until the next report, due on or before January 1, 1989.

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[1]See St. 1986, c. 537, s. 28, set forth at Appendix A.

This report is based on statistical data gathered by the District Court Administrative Office[2] and by discussions and interviews with judges, defense counsel and prosecutors operating under the new system. Formal comments were invited from the District Attorneys and the Committee for Public Counsel Services, especially regarding any concerns they had regarding the experience to date under the one trial system. Formal comment has been received from Hampden County District Attorney Matthew J. Ryan, Jr. He indicated his support for the new system and its functioning thus far. However, he voiced concern regarding the increase in volume of jury requests in that county and the effect of a pre-existing policy involving local prosecution by town and city prosecutors in Hampden County. Both of these issues are addressed in Section IV of this report.

Regarding the statistics relied on in the report, it should be mentioned that all of the conclusions reached are supported by the statistics set forth, and those statistics are considered generally valid and reliable. However, the lack of any computerized data system in the District Court requires that all case data be accumulated and tabulated manually. Given the hugh volume of cases involved, this process can jeopardize accuracy and completeness. In Essex County, assistance in analyzing the accumulated data was provided by the office of the Essex County District Attorney. Case disposition data and disposition time requirements were analyzed by use of the computer systems available at that office and on the basis of a 10% sampling technique. The tabulation and analysis of the data from Hampden County was accomplished entirely by a manual process.

III. IMPACT OF THE NEW SYSTEM

A. Case flow - Jury Trial Requests

Perhaps the single greatest concern regarding the shift from a two-trial to a one-trial system was that every defendant, when faced with the choice between a single, final bench trial

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[2]The required filing deadline for this report of January 1, 1988, prohibited the gathering and analysis of statistics through the month of December, 1987. Therefore the statistics reflected here and throughout this report are for the five-month period July through November, 1987.

The only exception is the analysis of jury requests in Section II A of the report. This is based on quarterly reports and thus covers only July through September under the new system.

or a single, final jury trial, would opt for the latter. The inevitable result would be that virtually all cases would pass through the local, or "primary", courts and accumulate at the regionally located jury sessions, resulting in large caseloads at the jury sessions and resulting delay.

The counter argument was that the presumed indispensible "screening" function of the de novo system is largely a myth. Nationwide (including here in the Commonwealth) criminal courts operating without the benefit of a de novo system dispose of no fewer than 90% of their cases pretrial, that is, without any trial, let alone a jury trial. Furthermore, it was argued that a proper system could be enacted allowing defendants to attempt to obtain an acceptable disposition at the local court in the context of a plea of guilty or an admission to sufficient facts, with no jeopardy to their right to claim a jury trial. Such a system, along with the availability of a final bench trial at the primary court, would ensure that the majority of cases were disposed of at the primary courts rather than passing through to the jury sessions.[3]

Operation under the new one-trial system has not resulted in a massive increase of jury trial claims. The large majority of case dispositions continue to occur at the local level.

As set forth below in Table 1 (see Appendix B), the volume of cases claimed for jury trial in the Essex County jury sessions did not change dramatically with the advent of the new procedure.[4] The volume of cases coming into these jury sessions during the third quarter of 1987 (the first three months under the new system) rose only 6% over the previous quarter. This does not represent a significant shift, particularly in

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[3]A full analysis of the need for and feasibility of abandonment of the de novo system in favor of a one-trial system in the Massachusetts District Court, is set forth in Elimination of the Trial De Novo System in Criminal Cases, Report of the Committee on Juries of Six to the Chief Justice of the District Court Department (January, 1984) (hereinafter, "De Novo Elimination Report").

[4]Note that this quarterly volume of jury requests includes cases covered by the new and old systems. That is, at least some of the jury requests made during the third quarter involve cases entered before July 1, 1987, the date the new system began. However, this does not affect the meaning of the data: If jury requests, in fact, were to have risen dramatically under the new system, that rise would be reflected in the third quarter statistics.

comparison with previous quarterly increases that have occurred over the past two years under the de novo system. For example, in the third quarters of 1985 and 1986 there occurred increases of 20% and 1% respectively under the old de novo system.[5] Moreover, the volume of jury requests during the third quarter is considerably below the volume experienced during four of the five previous quarters under the old de novo system. Thus, relative to the long term trend under the de novo system, the volume of jury requests under the new system actually represents a reduction.

In Hampden County there has occurred a large increase in the number of cases coming into the jury session: a 62% increase during the third quarter of 1987 compared with the second quarter. However, as explained below in Section IV, the cause of this increase has been identified, would appear to be easily addressed, and has not resulted in jury session backlog. Indeed, as of the second week of December, jury cases were being scheduled for trial in the second week in January. Also, this increase must be seen in perspective. While it represents a 62% increase over the previous quarter, the latter quarter had an unusually low volume. Compared to the average volume of the previous four quarters, the increase under the new system is only 22%.

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[5]It should be noted that the inventories of pending cases in the jury sessions at the Salem District Court continue to warrant special attention, however. The inventory consisted of 458 cases as of September 30, 1987, with 129, or 28%, over 120 days old. An analysis of the gradual build up of this backlog indicates that its primary cause was the introduction of mandatory minimum sentences in drunk driving cases in late 1982 and the subsequent "toughening" of drunk driving laws by means of the Safe Roads Act in late 1986. (It has been established that drunk driving cases now comprise more than half of all cases pending in the District Court jury sessions.)

This problem has been addressed by the establishment of a jury session at the Peabody District Court, originally as a satellite of the Salem jury sessions, and later, as of July 1, 1987, as a full-time, independent jury session, taking jury cases from the Peabody, Gloucester and Ipswich primary courts, all of which formerly went to the Salem jury sessions. As a result of this change, a gradual decrease in the Salem jury session backlog, and corresponding time to trial, has begun: Pending caseload at the end of June, 1987: 560; for the following months of July, August and September: 519, 431, 458, respectively.

More important, the third quarter increase in Hampden County, like that in Essex County, is not of significant proportion. If, in fact, the implementation of the one-trial system had resulted in wholesale jury trial claims, in accordance with some predictions, the increase in volume of cases coming to the jury sessions during the third quarter would have been far greater--with an order of magnitude of hundreds of percentage points. This is because of the high volume of cases in which jury claims could be made. Jury trial claims prior to adoption of the new system historically have occurred only in 3 to 4% of total District Court cases. Thus, the increase experienced in Hampden County, while impressive in absolute terms, represents only a small increase, perhaps only one or two percentage points, in the rate of jury claims as a percentage of total filings. Analyzed in these terms, the Hampden County increase means only that before the shift to a one-trial system approximately 97 in every 100 District Court defendants had their cases concluded in the primary court, whereas in the first three months under the one-trial system roughly 95 in every 100 defendants chose to do so.[6]

Nor would it appear to be premature to put to rest the critical question of wholesale jury claims. If in fact most defendants in a one-trial system would be inevitably compelled to pass through the primary court, rather than to request and receive a final trial or pretrial disposition there, it is fair to assume that this phenomenon would have emerged during the first three months. It would appear highly unlikely that after one quarter without such an effect, the rate of jury trial claims would subsequently undergo a rapid increase. In any event, monitoring of the issue will continue, and the next report on the new system due on or before January 1, 1989, will address the question again..

B. Case flow - Primary Court Dispositions.

A corollary to the concern for a huge "pass through" of cases to the jury sessions, has been a concern that somehow, even if most cases were resolved at the local or primary courts, the new system might seriously bog down that process. On this issue, the fear apparently has stemmed from a belief that the de novo system not only is efficient in "screening out" cases, i.e. disposing of them locally without the need for a jury trial claim, but also that the de novo system ensures that these dispositions are achieved quickly. According to this thinking,

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[6]Exact data regarding the rate of jury trial claims under the new system, i.e. the number of such claims as a percentage of total filings, are unavailable for Hampden County.

even if a significant number of cases are disposed of locally under a one-trial system, there may be great delay in achieving those dispositions. This delay may occur because under a one-trial system, a judge's decisions and rulings are subject to appellate review. Thus, pretrial motion practice would become more rigorous. Moreover, the initial bench trial in the de novo system, generally a relatively informal affair, would no longer be available to serve as a discovery device for those defendants who, depending on the outcome, might want to void the primary court trial and sentence and get a new trial in the jury session. Under the one-trial system, discovery would have to be sought in accordance with the applicable procedural rules, and this would be awkward and time-consuming.

However, a statistical review of case dispositions under the new system during the first five months of its operation does not reveal any particular grounds for concern at this time. These statistics, more fully set forth in Tables 2 and 3 (Appendices C and D, respectively), show that in Essex County, 92.7% of all cases disposed of at the primary courts under the new system were disposed of with finality, 88% by pretrial disposition, i.e. either by means of an admission or plea, or as a result of a pretrial motion, and 4.7% by means of a bench trial. And these disposition did not entail any delay: the average time from entry to pretrial disposition (the vast majority of cases) was 26 days, and from entry to bench trial was 67 days.

In Hampden County, 94% of all disposition occurred at the primary court, 91.9% by pretrial disposition and 2.1% by bench trial. Similarly, these dispositions were prompt: the average time from entry to pretrial disposition was 37 days, and from entry to bench trial 58 days.

In terms of volume, the primary courts in Essex County had, by November 30, disposed of 38% of all cases entered since July 1. The primary courts in Hampden had disposed of 21%. The entry dates of the cases entered under the new system are not known. Therefore, the average age of the undisposed pending caseloads under the new system in each county as of November 30 cannot be determined. However, presuming a random distribution of entry dates, the average age of the pending caseload after five months would be two and one-half months, or 75 days., The actual average age of the pending cases is likely to be less than this, since the entry dates of the cases still pending as of November 30 would tend to be later in the five month period than the entry dates of the cases already disposed.

In any event, it would appear that the new system has not negatively affected the promptness of dispositions in the

primary courts. And neither the rate of primary court disposition under the new system (38% in Essex County and 21% in Hampden County as of November 30), nor the average age of the undisposed cases in the primary courts in both counties (almost 75 days, and probably less, as of November 30), are cause for concern at this time. It must be kept in mind that the majority of cases disposed during the first five months of the new system were cases still governed by the old de novo procedure, that is, cases that had been entered before July 1, 1987. Only when these old cases have been eliminated will a more definitive picture of the impact of the new system be possible.

C. Case flow - Jury Session Dispositions

The manner of disposition of cases that have gone to the jury sessions under the new system is not entirely clear. This is because, as explained in note 5, Table 2, the sample of Essex County dispositions under the new system does not contain a subset of cases claimed for jury trial that is sufficiently large to provide statistically valid conclusions regarding the manner of jury session disposition. In other words, while the number of jury claims indicated in the sample validly represents the actual number of total jury claims made under the new system, so few were contained in the sample that no statistically valid conclusions can be drawn regarding the manner of their jury session disposition--pretrial, bench trial or jury trial. The statistical collection system in Essex County will be redesigned to accommodate this need, and the matter addressed in future reports.

However, the figures for Hampden County are instructive. There, all cases entered and disposed of under the new system were counted, rather than a sample. As shown in Table 3, (Appendix D), of the total of 2,174 cases disposed of under the new system during the period July 1 through November 30, only 127 such cases were disposed of in the jury session (6%). Of these, 98 (77%) were disposed of pretrial, 16 (13%) by bench trial and 13 (10%) by jury trial.

One point should be recognized regarding jury session dispositions under the new system. While the volume of cases going to the jury sessions under the new system is critical to the feasibility of that system, analysis of the dispositions of these cases once they arrive would not appear to be of major significance because there would appear to be no aspect of the new system that would affect the manner of disposition of jury session cases. Whether a case arrives at a jury session under the de novo system or under the one-trial system would appear to be essentially irrelevant to whether the defendant, having

arrived there, then chooses to conclude the case by pretrial disposition, bench trial, or jury trial.

In any event, the statistics gathering process for the next report due on or before January 1, 1989 will provide sufficient data to test this hypothesis, and, if the new system is shown to have had an effect on these variables, to determine the scope and significance, if any, of that effect.

D. Qualitative Improvements

The fundamental goal in eliminating trial de novo is to improve the quality of District Court criminal procedure.[7] In fact, it was recognized that while elimination of the de novo system might help produce some particular time savings, overall the shift to a one-trial system would produce a net increase in the demand for District Court judge time.[8] Thus, the central question was, "Can the overall increased time demands of a one-trial system be accommodated with present judicial resources?" The qualitative improvements in the administration of justice can be obtained only if the time demands could be absorbed.

As indicated above, the shift to a one-trial system does not appear to have had a significant impact on District Court case flow either in terms of case disposition at the primary courts, or in terms of the volume of jury trial claims. Moreover, some evidence of the qualitative improvements at the heart of the reform can be observed.

The "voidable" bench trial, which is immune from appellate review, has been eliminated. District Court defense attorneys and prosecutors alike appear to have begun to develop a meaningful pretrial motion practice. Under the new system, such motions not only can be dispositive, but the court's rulings on them are subject to appellate review. In contrast, rulings on pretrial motions in the primary courts under the de novo system are not reviewable nor are they of any significance if the case goes to a jury session. Under the de novo system, all rulings on motions, as well as all trial results and sentences, are rendered null and void at the defendant's option.

The use of the voidable bench trial merely as a discovery device has also terminated. The entire well-developed body of law and procedural rules by which discovery is both ensured and regulated--essentially meaningless in primary courts under the

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[7]See De Novo Elimination Report, pp. 22-26.

[8]See De Novo Elimination Report, pp. 41-56.

old de novo system--is now in effect. The salutary aspects of this change have been achieved without incurring burdensome delay, as indicated by the previous discussion of case flow under the new system. This appears to be true because, in a majority of cases, the discoverable material required by the defense in order to make a responsible decision regarding pretrial disposition is available from the prosecution as a matter of course. Where pretrial disposition is not possible, the rules provide a clear basis for resolving any issues regarding discovery that may arise.

Another qualitative benefit resulting from the adoption of the one-trial system in Essex and Hampden counties is the reduction in repeated court appearances by victims and witnesses. Though the frequency of such appearances and the reduction of this frequency over the past five months cannot be easily quantified, it can be said that many of the cases that have been disposed of under the new system by means of a pretrial plea or admission would, under the de novo system, have required a bench trial. In each of these instances, victims and witnesses who would have been required to appear have been relieved of that duty with no jeopardy to the rights of the defendants involved. In addition, because the possibility of double trials has been eliminated, the cases that have been tried in the jury session (with or without a jury) have required only one appearance by victims and witnesses, whereas in many if not most of these cases the victim and witnesses would have been required to attend an initial bench trial had the de novo system been in effect.

Similarly unmeasurable and subtle, but nonetheless important, are the other qualitative benefits inherent in the one-trial system that accompanied the implementation of that system. These benefits and advantages include the impact on sentencing and the public perception of justice.[9]

The improvements in the system have not come at the expense of defendant's rights. We are aware of no instances as yet in which any aspect of the new procedures has been the subject of appellate challenge in any appellate court, let alone any successful challenge. Nor are we aware of any aspect of the new procedures that has been invalidated as a matter of trial court interpretation or ruling.

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[9]These and other benefits of moving from the de novo system to the one-trial system are discussed in the De Novo Elimination Report, pp. 21-26.

E. Costs.

No costs as yet have been incurred in the implementation of the one-trial system in terms of personnel, equipment, supplies or other cost item. The sole, minor exception to the conclusion is the sum, less than $1,000, expended for the printing of revised transfer forms by which cases are transmitted from the primary courts to the jury sessions.

One resource that has been strained by the new system, however, is certain clerical and session-clerk personnel in the jury sessions in both Essex and Hampden Counties. However, it must be noted that these shortcomings were evident before the implementation of the new system and appear not to have been caused by it. And while the case flow to the jury sessions, as has been discussed, has not been significantly increased under the new system in terms of the sessions' ability to avoid delays in dispositions, the incremental increase in paperwork has exacerbated the pre-existing personnel shortages. These shortages will have to be addressed regardless of whether the new system is continued beyond the experimental period.

It can be argued, though not clearly documented, that an actual cost savings has been achieved under the one-trial system. This conclusion proceeds from the fact that the majority of primary court bench trials under the de novo system require the presence and testimony of the arresting or citing officer. The elimination of this procedure and its replacement with a formal guilty plea or admission procedure requiring, in most cases, only a recitation of facts from the police report, should translate into a marked decrease of police time spent in court. However, this has not been documented at this time.

IV. ISSUES IDENTIFIED

Based primarily on observations of the new system in operation and on informal discussions with participants, several important issues have been identified regarding the initial stage of implementation on the one-trial system. Each of these issues presents the opportunity to further improve the effective implementation of the new system and warrant careful monitoring.

A. The Cause of Many Jury Requests

The first and most important issue involves jury requests. It appears that in Hampden County especially, a number of defense counsel do not employ procedures available under the new system for obtaining a prompt and acceptable pretrial

disposition in the primary court with no jeopardy to the defendant's right to claim a jury trial. Under this procedure the defendant, through counsel, can submit a dispositional request to the judge in the primary court. This request need not be agreed upon by the prosecution. Under the law and applicable rules of court, the request is tendered in the context of an admission or plea of guilty with all attendant safeguards to assure that it is knowingly, intelligently and voluntarily made, and that there is a factual basis for the charge. If the court rejects the requested disposition, the defendant is free to withdraw the admission or plea and demand a trial, by jury if preferred. In rejecting the request, the judge may indicate the disposition that would be acceptable to the court, in which case the defendant can decide whether to maintain the plea or admission with that sentence resulting, or, in effect, reject that sentence and claim a trial.

Of course, no defendant is required to engage in this procedure. Following pretrial conference, each defendant is free merely to demand a trial at the outset and put the Commonwealth to its proof. However, the reality is that in all criminal court systems nationwide, the great majority of defendants do, in fact, "plead out," i.e. admit to sufficient facts or plead guilty in return for a disposition acceptable to the court and to the defendant. The prosecution either recommends or offers no opposition to most of these dispositions.

The increase in jury claims in Hampden County appears in large part to result from the lack of use of this procedure by defense counsel. As shown in Table 3 (Appendix D), of the 127 cases that went to the Hampden County jury session under the new system between July 1 and November 30 and were disposed of there, 98 (77%) were disposed of pretrial. These dispositions, with very few exceptions, were on admissions or pleas. (Only 13 (10%) were tried by jury; 16 (13%) received bench trials.) More important, it appears that the majority of pretrial dispositions obtained in the jury session were probably not significantly different from the dispositions that would have been received had those same dispositions been requested at the primary court. Again, if the desired disposition <u>had</u> been requested at the primary court but rejected, the defendant would have been free to withdraw the admission or plea and go to the jury session and try again.

Almost half of all jury requests coming into the Springfield jury session, which serves all of Hampden County, originate from the Springfield primary court. One tendency among some defense counsel in the Springfield primary court appears to be to claim jury trial soon after arraignment with no

attempt to request a disposition. This may be fostered by the fact that such an approach simply "puts the matter off" for two or three weeks, whereupon it will still be called in the Springfield court (albeit at the jury session), where the chance to plead or admit will again be available. Doubts about the new procedure and the fact that it in no way jeopardizes the defendant are resolved in favor of bypassing it.

The occurrence of this approach is borne out by the statistics. Of the 56 cases flowing to the Springfield jury session from the Springfield primary court and disposed there under the new system from July 1 through November 30, 47 (84%) were disposed of pretrial. Presumably, many if not most of these cases could have been disposed of in the Springfield primary court, had the available procedure been exploited.

In summary, at least a portion of the increased flow of cases to the jury sessions, especially in Hampden County, appears to result not from some inherent aspect of the system, but rather from the lack of use of a particular procedural component. In Hampden County, the majority of cases going to the jury session and disposed of there have been disposed of pretrial, virtually all by admission or plea: 84% of those from the Springfield primary court, 77% of the jury requests countywide. It is believed that further educational efforts with the bar will result in many if not most of these cases being resolved pretrial in the primary courts.

B. Integration of the Primary and Jury Sessions.

Since their statewide designation as a result of the Court Reorganization Act of 1978, the District Court jury sessions have been viewed as in some sense separate from the courts in which they function. This view seemed to result from the fact that jury trials were essentially foreign to the district courts. Because cases transferred to the jury sessions were, for the most part, "appealed" there under the de novo system, the jury sessions became viewed as a separate "level" of the district courts, not an integrated part of the courts wherein they operate. This has led to some inefficiencies. For example, jury sessions tend to be located in the courts with the highest volume in each county. Thus, a great proportion of each jury session's business comes from the very court at which it sits. But, because of the "separate level" concept, an entirely new case file is seen as necessary, even when a case going to the jury session is really only going "down the hall." This separate level concept may also play a part in the tendency thus far for more cases than perhaps necessary to be transferred from the primary courts to the jury sessions under the new system, particularly in Hampden County.

In any event, the introduction of the one-trial system has eliminated any conceptual grounds for the separate level perception. Under the new system, cases are not appealed to the jury session after a bench session trial. In each case where a trial is necessary, there is only one; the jury session merely provides a forum wherein jury trials are logistically possible. Each adjudication in the one-trial system is final and subject to appeal only on issues of law, regardless of whether it occurs at the bench session or a jury session.

This shift in perception clarifies the need and the propriety of streamlining the paper flow between the primary courts and jury sessions--certainly where a case goes from a bench session to a jury session in the same court there is no need for a separate case file to be created. A study of this issue is now underway. The resulting improvements may well ameliorate the clerical staffing problems that have long beset the jury sessions.

By eliminating the separate level concept, the one-trial system is producing a more important benefit. In a one-trial system there is no reason why a judge sitting in a primary court session cannot hear a pretrial motion, plea or admission in a case pending in the jury session at that same court (assuming that judge has not previously heard any evidence in the case). In other words, the one-trial system allows the maximum efficient use of judge-time, since cases cannot be viewed as having left one level of the system and gone to another. This office is currently exploring ways to take advantage of this flexibility, which should contribute to prompt dispositon of cases.

C. Pretrial Conference Scheduling and Conduct.

Another issue encountered during the initial months under the one-trial system involves the scheduling and conduct at the individual courts of the now-mandatory pretrial conferences. In several of the busier courts, the process followed was that cases scheduled for pretrial conference had to await the call of the list before being "sent out" for conference. This procedure has the disadvantage of causing all participants to wait through the call of the list before meeting to discuss pretrial matters, particularly the possibility of pretrial disposition, the method of disposition that will eventually obtain in the majority of cases.

It would appear unnecessary, in theory at least, for cases to be called <u>before</u> being conferenced. Efforts are under way to change procedures to ensure to the extent possible that defense

counsel conferences with the prosecution prior to the call of the list. In this way when the case is called the results of the conference can be reviewed by the court. Such an approach is possible only in a one-trial system. In a de novo system, a rigorous and truly productive pretrial conference system is not possible in so far as the all participants realize that the results of that conference, in terms of pretrial motions, a trial, or an admission, can be rendered pointless if the defendant chooses to appeal. It is believed that more progress can be made in promoting the more efficient scheduling and use of the pretrial conference as part of the one-trial system.

D. Pretrial Motions.

Some confusion has been observed regarding the requirements and options that exist under the one-trial system regarding the filing and hearing of pretrial motions.

The statute and applicable rules of court insure each defendant the option of filing any pretrial motion in the primary court, or in the jury session, if in fact the case is transferred to the latter forum. If the defendant files any pretrial motion in the primary court, the court may hear and decide it as a matter of discretion, with the exception of discovery motions, which it must hear and decide. A ruling on a pretrial motion by a primary court is binding in any further proceedings in a jury session. A ruling on a pretrial motion by a judge in a primary court or a jury session is appealable on issues of law. Regarding discovery motions, no defendant can be compelled to make the decision on jury trial waiver (i.e. whether he or she wants to take the case from the primary court to a jury session) until the primary court has heard and decided any discovery motions that have been filed. Regarding all other pretrial motions, the primary judge can decline to hear such motions unless the defendant waives jury trial.

Two issues have arisen under this scheme. First, there is some indication that primary court judges are reluctant to hear pretrial motions, even ones that are potentially dispositive, such as motions to dismiss and motions to suppress. This could be troublesome insofar as jury sessions become burdened unnecessarily with motions that could be heard in the primary courts, and cases that, based on those motions, could be disposed of in the primary courts. If this tendency indeed becomes problematic, one solution would be to authorize jury session judges to selectively "remand" such issues to the primary courts. However, it does not appear at this point that any remedial action is required.

The second aspect of the pretrial motion procedure that warrants further monitoring involves discovery. There appear to be some instances wherein multi-page, form discovery requests are filed as pretrial motions, without any attempt by the defense simply to request the documents and information desired directly from the prosecution. Two problems result. There is unnecessary delay while the motion is set for hearing. If the information to which the defense unquestionably has a right (e.g. the police report) were obtained without motion, this could promptly provide sufficient information on which to base a disposition request. Also, such form motions may seek material or documents irrelevant or inapplicable to the case at issue, a fact that can and should be explored by the parties at the pretrial conference.

This area of concern requires further monitoring at this time. No need for a change in procedures or rules is presented.

E. Local Prosecution in Hampden County.

As indicated in the Introduction to this report, the District Attorney of Hampden County has indicated his concern regarding the implementation of the one-trial system in the context of a pre-existing policy in Hampden County. Under that policy, many District Court criminal cases in the primary courts have been prosecuted by prosecutors employed by the various cities and towns. Under the old de novo system, the legal authority of these prosecutors, though questionable, has been moot in a practical sense. As with any alleged legal defect in a primary court proceeding under the old de novo system, the only remedy for any defendant wishing to challenge that authority was to claim appeal for a totally new trial. No potential legal defect could be addressed through appellate review under the de novo procedure.

With the advent of the one-trial system, defendants are free to raise legal issues through the appellate process (one of the reform's basic qualitative improvements). And the District Attorney has indicated his desire to be responsible for all prosecutions. Thus the issue of local prosecution is no longer merely academic. The District Attorney's concern is that assuming the burden of all local District Court prosecution will require significant increases in the number of Assistant District Attorneys.

The only response to this issue at this time would appear to be recognition of it and support of the necessary additions to the prosecutorial staff. If indeed the question of the validity of prosecution by local city and town prosecutor's receives appellate review as a result of the one-trial procedure

and is answered in the negative, it would appear that the requirement for District Attorney prosecution would obtain whether the one-trial system is maintained or the system reverts to the old de novo procedure. In other words, if local prosecution is determined to be invalid, the need for District Attorney prosecutors in all cases would appear to be established regardless of the type of system ultimately employed.

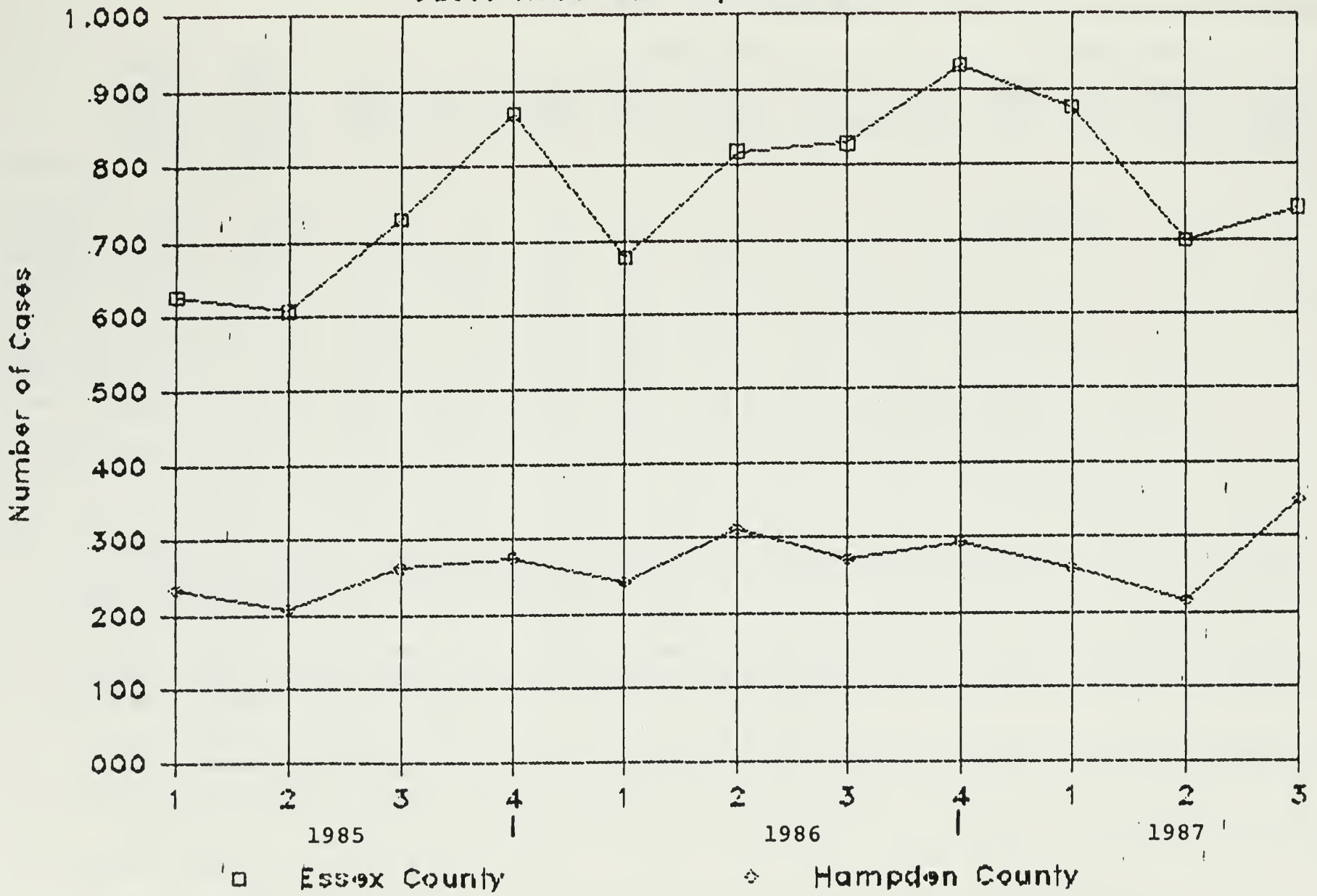
St. 1986, c. 537, s. 28:

SECTION 28. The administrative justice for the district court department of the trial court, in consultation with the district attorneys for Essex and Hampden counties and the committee for public counsel services, shall prepare and file with the clerks of the senate and house of representatives and the house committee on ways and means, an initial report on the implementation of this act, on or before January first, nineteen hundred and eighty-eight, an interim report on said implementation, on or before January first, nineteen hundred and eighty-nine, and a final report on said implementation, on or before January first, nineteen hundred and ninety. Said reports shall provide detailed information concerning the status and effect of implementation of this act, including but not limited to any costs incurred as a result of such implementation as well as a statistical analysis of the disposition of criminal prosecutions conducted pursuant to the provisions of this act which indicate for each district court the total number of cases entered, the number of cases disposed before trial, the number of cases tried by a jury of six, the number of cases tried by a court without a jury and the average time between entry and disposition of cases in each such category.

TABLE 1

Essex & Hampden Jury Sessions

Cases Received--By Quarter, 1985-1987



APPENDIX B

TABLE 2

DISPOSITIONS UNDER ONE-TRIAL SYSTEM - ESSEX COUNTY

July through November, 1987

	CASES ENTERED AFTER 6/30/87[2]	CASES DISPOSED BY 11/30/87	DISPOSITIONS BY TYPE[1] IN PRIMARY COURT: PRE-TRIAL	AVE.[3] TIME	BENCH TRIAL	AVE. TIME	JURY CLAIMS[4]	IN JURY SESSIONS: PRE-TRIAL	AVE. TIME	BENCH TRIAL	AVE. TIME	JURY TRIAL	AVE. TIME
ESSEX**													
Amesbury	340	377	335	13	22	48	20						
Gloucestar	901	526	496	25	20	52	10						
Havarhill	1,398	533	453	25	60	61	20						
Ipswich	185	N/A	N/A	N/A	N/A	N/A	N/A						
Lawrence	3,830	1,321	1,289	32	20	58	10						
Lynn	3,153	1,232	1,031	26	10	109	190						
Newburyport	927	585	477	19	65	72	43						
Peabody	1,054	619	499	29	60	61	60						
Salem	2,031	482	412	39	10	77	60						
TOTAL	13,819	5,675	4,992	26	267	67	413	NOT AVAILABLE[5]					
			88.0%		4.7%		7.3%						

[1]The numbers set forth for (1) cases disposed as listed by type of disposition and (2) average times to disposition have been determined from a random sample of 10% of all cases disposed. This sample exceeds the minimum necessary for a statistically valid result, in accordance with the rules of statistical analysis.

[2]The discrepancy for the Amesbury District Court--340 cases entered under the new system and 377 disposed of--has not been resolved. It may result from a number of summar "beach arrests" made prior to July 1, 1987 erroneously being counted as dispositions under the new systems, where the defendants were not arraigned until after July 1.

[3]"Ave. times" is the average number of days from entry to each type of disposition. The average time from entry to bench trial disposition in the Lynn District Court, 109 days, is distorted: the sampling technique yielded only one case in this category and it had a time span of 109 days from entry to disposition. Hence, the "average" of 109.

[4]"Jury claims" are the number of cases which were "disposed" in the primary court by claim of jury, regardless of whether these cases were disposed of in the jury session.

[5]The 10% sample of cases disposed under the new system, on which this analysis is based, yields a statistically inadequate number of jury session dispositions when broken down by type, i.e. pretrial, bench trial, jury trial. Thus, for example, a determination that one case from a sample of 100 was disposed of by jury trial during the period July 1 through November 30, 1987, does not provide a valid basis for determining that jury trials occurred with the same frequency for the entire volume of 1,000 dispositions. See discussion in Section III C of text regarding the significance of jury session dispositions by type.

TABLE 3

DISPOSITIONS UNDER ONE-TRIAL SYSTEM - HAMPDEN COUNTY
July through November, 1987

	CASES ENTERED AFTER 6/30/87	CASES DISPOSED BY 11/30/87	DISPOSITIONS BY TYPE: IN PRIMARY COURT — PRE-TRIAL	AVE. TIME[1]	BENCH TRIAL	AVE. TIME	JURY CLAIMS[2]	IN JURY SESSION — PRE-TRIAL	AVE. TIME	BENCH TRIAL	AVE. TIME	JURY TRIAL	AVE. TIME
Chicopee	1,059	345	331	56	2	55	12	9	116	1	91	2	108
Holyoke	1,394	231	198	33	5	77	28	20	100	5	62	3	91
Palmer	1,005	218	195	20	10	46	13	7	93	3	81	3	96
Springfield	5,448	1,060	977	44	27	54	56	47	78	7	92	2	91
Westfield	931	320	299	32	3	60	18	15	80	0	-	3	95
TOTAL	9,837	2,174	2,000	37	47	58	127	98	93	16	81	13	96
			91.9%		2.1%			4.5%		.7%		.5%	

[1] "Ave. time" is the average number of days from entry to each type of disposition.

[2] "Jury claims" are the number of cases in which the defendant in the primary court claimed a jury trial and in which there was a subsequent jury session disposition on or before November 30.

APPENDIX D